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An Act To Amend Provisions of the Submerged Lands Law

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the cap on the maximum rent for a lease of submerged lands is repealed effective June 30, 2009; and

Whereas, implementing a more equitable rent schedule to coincide with removal of the cap is beneficial to many lessees and to the management of submerged lands and shore and harbor improvements; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §1862, sub-§1, ¶C, as enacted by PL 1997, c. 678, §13, is amended to read:

C. "Fair market rental value," for all uses of submerged lands except slip space rented or otherwise made available for private use for a fee, means the municipally assessed value per square foot for the adjacent upland multiplied by a reduction factor plus a base rate based on the use of the leased submerged land as specified in this section. This value is then multiplied by the square foot area of the proposed lease area to determine the annual rental rate. For slip space rented or otherwise made available for private use for a fee, the fair market rental value is the gross income from that space multiplied by a reduction factor as specified in this section based on the use of the leased submerged land.

Sec. 2. 12 MRSA §1862, sub-§1, ¶D-1, as enacted by PL 2005, c. 134, §2, is repealed.

Sec. 3. 12 MRSA §1862, sub-§1, ¶E-1 is enacted to read:

E-1. "Offshore project" means a project that extends beyond localized development adjacent to a single facility or property. "Offshore project" includes, but is not limited to, tanker ports, ship berthing platforms requiring secondary transport to shore, an interstate or international pipeline or cable and similar projects. "Offshore project" does not include a shore-based pier, marina or boatyard or utility cable and pipelines serving neighboring communities or islands. "Offshore project" does not include wind farms, tidal and wave energy facilities or other offshore renewable energy projects.

Sec. 4. 12 MRSA §1862, sub-§2, ¶A, as enacted by PL 1997, c. 678, §13, is amended to read:

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures and for nonpermanent structures occupying a total of 500 square feet or more of submerged land or occupying a total of 2,000 square feet or more of submerged land if used exclusively for commercial fishing activities:

(1) The director shall charge the lessee a base rent that practically approximates the fair market rental value of the submerged land. The reduction factors and base rate for use categories are as follows:

(a) A reduction factor of ~~0%~~0.1% with no base rate or no rental fee; for nonprofit organizations or publicly owned facilities that offer free public use or public use with nominal user fees. Public uses include, but are not limited to, municipal utilities and facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves, swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for the maintenance of the facility;

(b) A reduction factor of ~~1%~~0.1% plus a base rate of \$0.025 per square foot for commercial fishing uses of renewable aquatic resources. Commercial uses of renewable aquatic resources include, but are not limited to, facilities that are directly involved in commercial fishing activities. Such facilities include, but are not limited to, fish piers, lobster impoundments, fish processing facilities and floats or piers for the storage of gear;

(c) A reduction factor of 2% for any slip space rented or otherwise made available for private use by commercial fishing boats for a fee;

(d) A reduction factor of ~~2%~~0.2% plus a base rate of \$0.05 per square foot for water-dependent commerce, industry and private uses. Water-dependent commerce, industry and private uses other than commercial uses of renewable aquatic resources include, but are not limited to, all facilities that are functionally dependent upon a waterfront location, can not reasonably be located or operated on an upland site or are essential to the operation of the marine industry. Such facilities include, but are not limited to, privately owned piers and docks, cargo ports, private boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are engaged in watercraft construction, maintenance or repair, aquariums and the area within marinas occupied by service facilities, gas docks, breakwaters and other structures not used for slip space;

(e) A reduction factor of 4% for any slip space rented or otherwise made available for private use for recreational boats for a fee. ~~For facilities that include slip space under constructive easement, the rental fee may be reduced proportionally by the ratio of linear length of slip space within the area under constructive easement to the total linear length of all slip space within the facility; and~~

(f) A reduction factor of ~~2%~~0.2% for upland uses and fill located on submerged lands prior to July 1, 2009 and 0.4% for new upland uses and fill after July 1, 2009 plus a base rate of \$0.05 per square foot. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or that are not essential to the operation of the marine industry. These facilities include, but are not limited to, residences, offices, restaurants and parking lots. Fill must include the placement of solid material other than pilings or other open support structures upon submerged lands.

~~When~~If the director determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of submerged land, the director may make adjustments in the municipally assessed value so that it more closely reflects the value of comparable waterfront properties in the vicinity or require the applicant to provide an appraisal of the submerged land. The appraisal must be approved by the director;.

For offshore projects where municipally assessed value for the adjacent upland or submerged lands appraisals are unavailable or the director determines that such assessment or appraisals do not accurately indicate the value of the submerged land, the director may establish the submerged lands annual rental rate and other public compensation as appropriate by negotiation between the bureau and the applicant. In such cases the annual rent and other public compensation must take into account the proposed use of the submerged lands, the extent to which traditional and customary public uses may be diminished, the public benefit of the project, the economic value of the project and the avoided cost to the applicant. If the State's ability to determine the values listed in this paragraph or to carry out negotiations requires expertise beyond the program's capability, the applicant must pay for the costs of contracting for such expertise;

(2) After October 1, 1990, the director may revalue all existing rents to full fair market rental value. Rents for all uses except slip space may be adjusted annually as needed over a period not to exceed 5 years until the full fair market rental value is reached. ~~Thereafter~~After the full fair market rental value is reached, the director may revalue rents for all uses except slip space every 5 years based on changes in municipally assessed value and programmatic cost adjustments to the base rate. Adjustments to the base rate may not exceed 4% per year. Rents for slip space may fluctuate annually depending on the gross income of the facility;

(3) The director may also lease a buffer zone of not more than 30 feet in width around a permanent structure located on submerged or intertidal land, provided that the lease is necessary to preserve the integrity and safety of the structure and that the Commissioner of Marine Resources consents to that lease;

(4) Any existing or proposed lease may be subleased for the period of the original lease for the purpose of providing berthing space for any boat or vessel;

(5) No portion of an existing or proposed lease may be transferred from a person subleasing that portion to provide berthing space for any boat or vessel except for a transfer to heirs upon death of the sublessee holder or a transfer to the original leaseholder subject to terms agreed to by the lessor and sublessee at the time of the sublease. This subparagraph does not apply to any subleasing arrangements entered into before June 15, 1989; and

(6) The director may grant the proposed lease if the director finds that, in addition to any other findings that the director may require, the proposed lease:

(a) Will not unreasonably interfere with navigation;

(b) Will not unreasonably interfere with fishing or other existing marine uses of the area;

(c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities; and

(d) Will not unreasonably interfere with ingress and egress of riparian owners.

The bureau shall adopt rules pertaining to this subparagraph by March 15, 1990.

Sec. 5. 12 MRSA §1862, sub-§2, ¶D, as enacted by PL 1997, c. 678, §13, is amended to read:

D. The director may establish a reasonable minimum rent to which any lease is subject, ~~not to exceed \$100~~ is \$150 per year.

Sec. 6. 12 MRSA §1862, sub-§9, as enacted by PL 1997, c. 678, §13, is amended to read:

9. Public compensation. ~~When~~ With respect to any lease, including, but not limited to, leases for offshore projects, when the director determines that the public should be compensated for the loss or diminution of traditional and customary public uses resulting from the activities proposed by the lessee, the director may negotiate with the lessee to provide public access improvements such as walkways, boat

launching ramps, parking space or other facilities or negotiate a fee in lieu of such improvements as a condition of the lease. The determination of loss or diminution of traditional and customary public uses and appropriate public compensation must be made in consultation with local municipal officials.

Sec. 7. Application. This Act applies to new and renewal leases issued under the Maine Revised Statutes, Title 12, chapter 220, subchapter 5 after June 30, 2009 and all leases after December 31, 2009.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 9, 2009.